

## REMARKS

Favorable consideration and allowance of the claims of the present application are respectfully requested.

Claims 1-20 are currently pending.

In the present Official Action, Claims 1-5, 9-14 and 17-20 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by Kerr (US Patent Publication No. 2005/0043096)(hereinafter Kerr). Further, Claim 6 was rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Kerr in view of Cox et al (US 5,696,964) (hereinafter Cox). Furthermore, in the present office action, Claims 7-8 and 15-16 were indicated as comprising allowable subject matter if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. The Examiner is respectfully thanked for such indication of allowable subject matter.

With respect to the rejection of Claims 1-5, 9-14 and 17-20, Applicants respectfully disagree in view of the amendments and remarks herein.

As a preliminary matter, applicants amend each of independent Claims 1, 11 and 18 to clarify that the means and steps of detecting (Claims 1 and 11) or measuring (Claim 18) a person's response characteristics includes detecting one or more of that person's emotional, behavioral or physiological response. This detecting step is neither taught nor described in Kerr as Kerr's prior art system does not require such detection. Kerr rather is directed to using a biometric input as a way of identifying a user, e.g., for granting proper user authorization and access to a gaming system. Thus, in an off-line subscription or registration process, Kerer's system will provide a prompt that instructs a user to provide a biometric input (e.g., a fingerprint, retinal scan) that can be stored and subsequently used to properly authenticate the user when trying to enter into the gaming system.

The present invention is respectfully different. Respectfully, Kerr does not provide a stimulus as claimed in amended independent Claims 1, 11 and 18 to purposefully elicit an emotional, behavioral or physiological user response. In the present invention, the stimulus comprises: audio stimuli such as spoken words, visual stimuli such as images, movie clips, artificial sounds or olfactory stimuli such as scents, i.e., any stimulus that would inflict a different emotional/behavioral response on different users (See paragraph [006] of the present invention.) To the contrary, in Kerr, a “prompt” is provided that is not intended to elicit one or more of a person’s emotional, behavioral or physiological response. Moreover, Kerr does not provide a “stimulus” to elicit a user’s response as understood in the present invention. Rather, Kerr actually provides an indication, e.g., via a user interface provided via a registration (kiosk) terminal or web-site, as described at paragraph [0091] in Kerr, for prompting a user to provide a biometric input. Respectfully, the user response of providing a fingerprint input or retinal scan in response to the user “prompt” does not rise to the level of providing an emotional, behavioral or physiological response in response to a purposeful stimulus as defined within the context of the present invention.

For these reasons, Kerr cannot be said to be anticipatory of the present invention as it does not provide a stimulus within the meaning of the present invention that is targeted to elicit one or more of an emotional, behavioral or physiological response as described in the present invention that can be used to accurately identify person in a subsequent recognition process. Notwithstanding the Examiner’s reliance of the definition provided at paragraph [0020] of Kerr that “biometric” includes a psychological or behavioral trait, the Kerr reference does not describe any particular type of stimulus that would elicit such a unique psychological or behavioral response characteristic as defined in the present invention. Nor

does Kerr describe or teach anywhere the use and solicitation of a biometric comprising an emotional response characteristic as now set forth in independent Claims 1, 11 and 18.

Thus, with respect to Claims 1-5, 9-14 and 17-20, Applicants respectfully request that the Examiner withdraw the 35 U.S.C. §102(e) rejection as allegedly anticipated by Kerr.

As a basis for the rejection of independent Claim 6, the Examiner cites Cox's Fig. 10 as allegedly providing a teaching of eliciting a user's emotional response characteristics. Applicants respectfully disagree. Cox basically describes a database search process that enables display of items for which a user may respond to and which responses may be collected and used by the system for refining or provided a more targeted database search. Respectfully, Cox is of no help in several aspects, namely: 1) Cox stimulus comprises a list of items generated as a result of a database search and is not a stimulus within the meaning of the present invention to elicit one or more of an emotional, behavioral or physiological response; 2) while the user's response in Cox is a "behavior", this behavior does not rise to the level of a "biometric" response as elicited according to the present invention; and 3) Cox is not utilized for purposes of identification or authorization, and as such, is not readily combinable with Kerr in a 35 U.S.C. §103(a) sense as it is appertunant to a different technology/art altogether.

For these reasons, the Examiner is respectfully requested to withdraw the rejection of Claim 6 under 35 U.S.C. §103(a).

In view of the foregoing amendments and remarks, this application is now believed to be in condition for allowance, and a Notice of Allowance is respectfully requested.

If the Examiner believes a telephone conference might expedite prosecution of this case, it is respectfully requested that he call applicant's attorney at (516) 742-4343.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven Fischman", with a long horizontal line extending to the right.

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